IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13702 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

INGERSOLL RAND AND OTHER INDUSTRIES EMPLOYEES UNION & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 8 - Respondent(s)

==========

Appearance :

MR SHALIN N MEHTA for Petitioner(s) : 1 - 2.
MS PANDIT, A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 9.

==========

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 17/07/2006

ORAL JUDGMENT

1. Heard the learned advocate Mr. Shalin N. Mehta appearing on behalf of the petitioners and learned A.G.P. Ms. Pandit appearing on behalf of Respondents No.1 to 3.

2. Before dealing with this matter, it is necessary to consider the prayer made by the petitioner in the present petition, therefore, para 28 prayer 'A' to 'O' which are quoted as under :

> *"Para 28 (A) : Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents No.1 to 3 herein not t o recognise or approve any Settlement / Agreement that may be entered into or signed by the respondent Company with the old office bearers of the petitioner Union, and to recognise and approve only those Settlements / Agreements that are signed by the respondent Company with the newly appointed office bearers of the petitioner Union who have assumed office on and from 29.4.2006;*
>
> *Para 28 (B) : Your Lordships may be pleased to issue a writ of certiorary or any other appropriate writ, order or direction, to quash the Settlement / Agreement dated 31.5.2006 entered into by the respondent Company with the old office bearers of the petitioner Union in the course of conciliation;*
>
> *Para 28 (C): Your Lordships may be pleased to*

declare that the Settlement / Agreement dated 31.5.2006 entered into by the respondent Company with the old office bearers of the petitioner Union is void ab initio and of no legal effect;

Para 28 (D) : Your Lordships may be pleased to pass a cease and desist order to restrain the respondent Company from committing unfair labour practices in collusion with the old office bearers of the petitioner Union against the workmen of the respondent Company;

Para 28 (E) : Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents No.1 to 3 herein to initiate prosecution under the provisions of the Industrial Disputes Act, 1947, against the respondent Company and the old office bearers of the petitioner Union (respondents No.7 to 9 herein), for committing unfair labour practice against the workmen of the respondent Company;

Para 28 (F) : Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondent Company to collectively bargain in future with the newly

elected office bearers of the petitioner Union and not with the old office bearers of the petition Union, the respondents No.7 to 9 herein;

Para 28 (G) : Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding the Federation of Ingersoll Rand Employees (FIRE), the respondent No.6 herein to disallow the participation of the old office bearers of the petitioner Union in the activities and business of FIRE, more particularly, while holding negotiations with the respondent Company;

Para 28 (H) : Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding the respondents No.1 to 3 herein to refer the industrial dispute raised by the petitioner Union with regard to the illegal lock out declared by the respondent Company on 2.5.2006 through 31.5.2006, to the concerned Labour Court / Industrial Tribunal for adjudication;

Para 28 (I) : Your Lordships may be pleased to declare that the lock out declared by the respondent Company against its workmen on 2.5.2006 through 31.5.2006 is illegal and

violative of Sections 22 and 23 of the Industrial Disputes Act, 1947;

Para 28 (J) : Pending admission and final hearing of the present petition, Your Lordships may be pleased to stay the operation and implementation of Settlement / Agreement dated 31.5.2006 (Annexure-E);

Para 28 (K) : Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondents No.1 to 3 herein to refer the industrial dispute raised by the petitioner Union with regard to the illegal lock out declared by the respondent Company against its workmen on 2.5.2006 through 31.5.2006, to the concerned Labour Court / Industrial Tribunal for adjudication;

Para 28 (L) : Pending admission and final hearing of the present petition, Your Lordships may be pleased to restrain the respondents No.7 to 9 herein from pausing themselves as office bearers of the petitioner Union or as members of the Federation of Ingersoll Rand Employees (FIRE) with effect from 29.4.2006;

Para 28 (M) : Pending admission and final hearing of the present petition, Your

Lordships may be pleased to restrain the respondent Company from entering into Settlement / Agreements with the old office bearers of the petitioner Union;

Para 28 (N) : Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondent Company to collectively bargain with the newly elected office bearers of the petitioner Union who are the authorised representatives of the workmen of the respondent Company on and from 29.4.2006 through this date;

Para 28 (O) : Your Lordships may be pleased to pass any other appropriate order, as deemed fit, in the interest of justice;"

3. In view of the above prayers, this Court has to consider as to whether writs should have to be entertained by this Court while exercising the power under Article 226 of the Constitution of India.

4. In the present petition, petitioner having various prayers against the respondent which are based on disputed question of facts. The settlement dated 31st May 2006 is challenged by the petitioner to set aside the same. The dispute about lock out declared by the management adopting unfair labour practice by the management and inactive approach of

authority under the machinery of Industrial Disputes Act, 1947. Learned advocate Mr. Mehta submitted that settlement dated 31st May 2006 arrived at by the Management with old office bearers of the Union and not with new office bearer of the Union. He submitted that management was aware about new office bearer as well as a statutory authority was also aware about the existence of new office bearer, even though, new office bearers have been ignored by statutory authority and management. Therefore, he submitted that ignoring the new office bearer of Union is amounts to unfair labour practice adopted by the management. He relied upon Item No.1 and 2 of 5th Schedule with Section 25(T) which provided that in case of employer adopted any unfair labour practice or Union if adopted such practice, the penal provision are there for prosecution under the provisions of the Industrial Disputes Act ,1947. Learned advocate Mr. Mehta has submitted that in case of disputed questioned of facts as considered the documents are on record wherein neither statutory authority nor employer has given any reply. Therefore, it considered to be an admitted facts. He also submitted that disputed question of facts and alternative remedy should not come in his way as it is not absolute bar, Court may exercise discretionary power to entertain such petition under Article 226 of the Constitution of India. He referred the number of documents including the settlement dated 31st May 2006. The grievance of the petitioner is that management should have to discuss with the

petitioners and not allowed to discuss with other office bearers of the Union. Whether petitioner – Union with new office bearers has been recognised by the employer or not. He is not able to give any answer to that where the right of recognised Union has been arisen and under which provisions the right of recognition given to the Union. There is no reply to this question raised by this Court. Therefore, in light of this facts and considering the submission made by learned advocate Mr. Mehta that dispute about lock out by Union not refer so far for adjudication. Though failure report submitted by the conciliation officer to the appropriate Government. These are inactive approach of the authority , therefore, he submitted that this Court may entertain the petition filed by the petitioner.

5. Except refer above, no such submissions made by learned advocate Mr. Mehta before this Court.

6. The contention raised by learned advocate Mr. Mehta that settlement dated 31st May 2006 arrived at by the management before conciliation officer with old office bearers of the Union is illegal, contrary to law and therefore, same is required to be quashed and set aside. This contention has been examined by the Apex Court in case of ***State of Uttaranchal v. Jagpal Singh Tyagi*** reported in ***(2005) 8 SCC 49*** and in case of ***Jaihind Roadways v. Maharashtra Rajya Mathadi Transport & General Kamgar Union and Others*** reported in ***(2005) 8 SCC 51***. In both the decisions,

Apex Court has come to the conclusion that challenge of settlement which having binding effect on the ground of fraud, misrepresentation or concealment of facts, a writ is not maintainable but the same is maintainable only as the subject matter of another dispute. The Apex Court further observed that “there was nothing on record brought by the respondent employee to show that there was any pressure or undue influence was exercised.” Having obtained the benefit by the employees of the settlement which are in dispute, it was not open to the workers to contend that settlement is not fare or just. The relevant observations made in case of ***State of Uttaranchal v. Jagpal Singh Tyagi*** reported in ***(2005) 8 SCC 49*** in Para 4 and 5 which are quoted as under :

> ***“Para 4 : We find that the approach of both the Labour Court and the High Court is clearly on wrong premises. If there was dispute on the question as to whether the settlement was bona fide or was obtained by fraud, misrepresentation or concealment of facts, the same can only be the subject matter of another industrial dispute. To substantiate the averments that such settlement could not have been arrived at, nothing was brought on record by the respondent employee to show that there was any pressure exercised or that he was subjected to undue influence. There is***

also no material to show that the settlement was intended to frustrate the order passed by the High Court. At no point of time, the respondent employee raised any dispute as regards the fairness of the settlement. Having obtained the benefit, it was not open to him to turn down without justifiable reasons to contend that the settlement was not fair.

Para 5 : In National Engg. Industries Ltd. v. State of Rajasthan it was observed as follows : (SCC p.24, para.393)

"Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable."

7. In case of ***Jaihind Roadways v. Maharashtra Rajya Mathadi Transport & General Kamgar Union and Others*** reported in ***(2005) 8 SCC 51*** as referred above, the decision of ***State of Uttaranchal v. Jagpal Singh Tyagi*** as referred above has been considered by the Apex Court. The relevant observations made by the Apex Court in Jaihind Roadways's Case, Paras No.8 to 12 which are quoted as under :

> ***"Para 8 : The effect of settlement has been considered by this Court in several cases. In Sirsilk Ltd. v. Govt. of A.P. It was observed as follows : (SCR pp.453-54): "The contention on behalf of the appellant in the alternative is this. It is said that the main purpose of the Act is to maintain peace between the parties in an industrial concern. Where therefore parties to an industrial dispute have reached a settlement which is binding under S. 18 (1), the dispute between them really comes to an end. In such a case it is urged that the settlement arrived at between the parties should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. There is no doubt that a settlement of the dispute***

between the parties themselves is to be preferred where it can be arrived at to industrial adjudication, as the settlement is likely to lead to more lasting peace that an award, as it is arrived at by the free will of the parties and is a pointer to there being goodwill between them. Even though this may be so, we have still to reconcile the mandatory character of the provision contained in S. 17 (1) for the publication of the award to the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided in S. 18 (1). Ordinarily there should be no difficulty about the matter, for if a settlement has been arrived at between the parties while the dispute is pending before the tribunal, the parties would file the settlement before the tribunal and the tribunal would make the award in accordance with the settlement."

<u>Para</u> 9 : Similarly in State of Bihar v. D.N.Ganguly it was observed as follows : (SCR pp.1202-03)

"It is, however, urged that if a dispute

referred to the industrial tribunal under Sec. 10 (1) is settled between the parties, the only remedy for giving effect to such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the industrial tribunal. This argument is based on the assumption that the industrial tribunal would have to ignore the settlement by the parties of their dispute pending before it and would have to make an award on the merits in spite of the said settlement. We are not satisfied that this argument is well-founded. It is true that the Act does not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of O. XXIII, R. 3 of the Code of Civil Procedure. But it would be very unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to

industrial peace and harmony are the primary objects of this Act. Settlements reached before the conciliation officers or boards are specifically dealt with by Ss. 12 (2) and 13 (3) and the same are made binding under Sec. 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. It was stated before us at the bar that innumerable awards had been made by industrial tribunals in terms of the settlements between the parties. In this connection we may incidentally refer to the provisions of Sec. 7 (2) (b) of the Industrial Disputes (Appellate Tribunal) Act, 1950, (XLVIII of 1950), which expressly refer to an award or decision of an industrial tribunal made with the consent of the parties. It is true that this Act is no longer in force; but when it was in force, in providing for appeals to the Appellate Tribunal set up under the said Act, the legislature had recognised the making of awards by the industrial tribunals with the consent of the parties. Therefore, we cannot accept

the argument that cancellation of reference would be necessary in order to give effect to the amicable settlement of the dispute by the parties pending proceedings before the industrial tribunal."

<u>Para</u> 10 : Whether the settlement is tainted or unfair has to be decided if specific reference is made on that aspect. In National Engg. Industries Ltd. v. State of Rajasthan SCC at pp.393-94 it was observed as follows :

"It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to

adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at

outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which has objected to the same. Recognised union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with the object to uphold the sanctity of settlement reached with

the active assistance of the Conciliation Officer and to discourage an individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of P. Virudhachalam v. Management of Lotus Mills (1998) 1 SCC 650 : (1998 AIR SCW 145 : AIR 1998 SC 554 : 1998 Lab IC 834). In all these negotiations based on collective bargaining individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out.”

***Para 11** : The position was recently examined in State of Uttaranchal v. Jagpal Singh Tyagi. It was held as follows : (SCC p.50, Para.3)*

"3. Learned counsel for the appellant State submitted that there was nothing on record to show that there was any pressure put on the respondent employee or that undue influence was exercised. The conclusion was arrived at without pleadings in this regard. For the first time in the counter affidavit filed before the High Court, stand to that effect was taken. Without any material to support the contention, the High Court held that the settlement was not proper and in order to frustrate the order passed by the High Court, the same was arrived at. The effect of the affidavits and the undertaking was totally ignored."

***Para 12** : We find that there was really no issue raised regarding fairness of the settlement. The Tribunal as well as the High Court came to conclusions without any material that settlements were not fair. As noted in National Engg. Case and State*

of Uttaranchal case there has to be a specific reference on this issue which was not there before the Tribunal and in any event no material was placed or any positive stand taken by any workman."

8. The Apex Court has considered the question of disputed facts between the parties which required to pursue specific remedies appropriated therefore in law. The Apex Court has observed "a matter involved great deal of disputed question of fact cannot be dealt by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot in view of the nature of the controversy as also the disputed question of facts go into the merits of the matter evidently no relief can be granted to the petitioner at this stage." The above view expressed by the Apex Court in case of ***Sanjay Sitaram Khemka v. State of Maharashtra & Ors.*** reported in ***JT 2006 (11) SC 373***. The relevant para 10 is quoted as under :

"A writ petition, as has rightly been pointed out by the High Court, for grant of the said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of the

controversy as also the disputed questions of fact, go into the merit of the matter; evidently no relief can be granted to the petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution."

9. In case of ***Air India Limited and Others vs. Vishal Capoor & Ors.*** reported in ***JT 2005 (12) SC 170,*** the Apex Court has observed as under :

"A disputed question of facts will normally arise when a petitioner puts forward a case on facts which are controverted by the respondents. This is naturally so, as it cannot be excepted that the petitioner will of his, her or its own say that the facts forming the basis of the claim are disputed. Although it may happen that the court on a scrutiny of the nature of the claim made in the petition may come to a conclusion that the factual issues raised are ex facie controversial and decline in limine to exercise jurisdiction under Article 226 of the Constitution of Indian nevertheless the contravery usually surfaces after the

respondents have had an opportunity of giving their version of the matter."

10. The Apex Court further observed in Para 38 and 44 which are quoted as under :

"Para 38 : Another error in the decision impugned before us was the refusal to allow the respondents 7 to 12 to raise their claim regarding their seniority because they had withdrawn their complaint under Section 33A o the Industrial Disputes Act, 1947. It is nobody's case that the complaint of the Adhikari group under Section 33A was legally maintainable in Reference No.NTB 1 of 1990. In fact both the first appellant and the Guild had opposed the complaint on this ground. Section 33A allows a complaint to be filed in a pending reference where an employer contravenes the provisions of Section 33 of the 1947 Act during the pendency of proceedings pursuant to a reference under Section 10(1) of the 1947 Act. The relevant portion in Section 33(1)(a) prohibits an employer from altering, to the prejudice of the "workmen concerned in such dispute", the conditions of service applicable to them immediately before the commencement of the proceeding. There was no pending proceeding relating to any dispute between Air India and its workmen in which

the Adhikari group could have filed a complaint under Section 33A. The dispute which was pending before the Tribunal in Reference No. NTB-1 of 1990 did not relate to a dispute between the first appellant and its workmen. It related to a dispute between Indian Airlines and its workmen basically on the question whether the latter were entitled to the same terms and conditions of service as the employees of the first appellant. The award which has since been made on the reference by the Tribunal also records :

"This reference cannot cover any industrial dispute between Air India and its workmen as the order of the Central Govt. is confined to dispute between (Indian) Airlines and its workmen."

***Para 44** : At present, we have two alternatives open to us. We may set aside the impugned decision of the High Court and allow the appeal by dismissing the writ petition leaving the parties to have their disputes thrashed out before the Industrial Forum. This would entail raising a dispute and an order for reference being passed under Section 10(1) of the 1947 Act by the appropriate Government. We may on the other hand formulate the dispute ourselves directing the parties to move the appropriate Government for an order of reference. It is the latter course which has been urged by the*

appellants and the respondent 7 to 12 relying on a decision of this Court in Hindustan Steel Works Construction Ltd. & Anr. v. Hindustan Steel Works Construction Ltd. Employees Union.***"***

11. In case of ***Karnataka Power Corporation Ltd. And Another v. K. Thangappan and Another*** reported in ***2006-II LLJ 421***, the Apex Court has observed in Para 11 which is quoted as under :

"Para 11 : Additionally, whether Clause 4 of the Settlement was applicable to respondent No.1- workman could not have been adjudicated in a writ petition. In fact, the High Court had not even given any finding in that regard. As has been observed by this Court in ONGC Ltd. And Anr. v. Shyamal Chandra Bhowmik 2006 (1) SCC 337 : 2006-I-LLJ-419 in cases of this nature a writ petition is not the proper remedy."

12. In case of ***Mayurakshi Cotton Mills and others v. Panchra Mayurakshi Cotton Mills Employee's Union and others*** reported in ***AIR 2000 SC 1206***, the Apex Court has observed in para 4 which as quoted as under :

"We have given our anxious consideration to the rival submissions made by the learned

counsel on either side. Whether a settlement is fair or unfair or valid cannot be examined in the absence of factual back ground in which the same was entered into. If really the mills was in financial doldrums and retrenchment had to take place in some form or the other and if a method was to be worked out by the management and the workmen, which is fair, it cannot easily be said that the mills should not work with lesser number of workmen and provide a scheme for retrenchment or otherwise. It may not be easy to state that such settlement is unfair or amounts to victimisation. The option was between closure of the mills itself or opening of the mills with lessor number of workmen. Some times hard choices have to be made and sacrifices are expected to be made by either side. These aspects have to be borne in mind in deciding such questions. Therefore, we cannot in the abstract, in the absence of material before the Court, state that the High Court could have come to the conclusion one way or the other and particularly based on the theoretical approach to Sections 25-F and 25-G of the Act or Article 21 of the Constitution. We are of the view that the order made by the Division Bench deserves to be set aside and that of the learned single Judge be restored, however, with the modification that a reference shall be made,

as stated by Shri Dipankar Gupta, in respect of all matters arising in this case as to the employment, non-employment, the validity of the settlement and all other allied issues and the reliefs to be granted to the parties, to an appropriate Industrial Tribunal within a period of six weeks from today and such Tribunal shall enter upon the reference for adjudication as early as possible and decide the same within a period of six months from the date of reference to it."

13. In case of ***New Standard Engineering Co. Ltd., v. N.L. Abhyankar and another*** reported in ***AIR 1978 SC 982***, the Apex Court has observed as under :

"Settlement of labour disputes by direct negotiation or settlement through collective bargaining is always to be preferred for, it is the best guarantee of industrial peace which is the aim of all legislation for the settlement of labour disputes. In order to bring about such a settlement more easily, and to make it more workable and effective, it is no longer necessary, under the law, that the settlement should be confined to that arrived at in the course of a conciliation proceeding, but now includes, by virtue of the definition in Section 2(p) of the Act, a written agreement between the employer and the workmen arrived at otherwise

than in the course of a conciliation proceeding where such agreement has been signed by the parties in the prescribed manner and a copy thereof has been sent to the authorised officers. Rule 58(2) of the Industrial Disputes (Central) Rules, 1957, prescribes the manner of signing the settlement. Under Section 18(1) of the Act a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceedings is binding on the parties to the agreement. It is well known that the possibility of an adverse decision by the Court operates as a positive force in favour of deliberate and careful effort by both parties to settle their dispute through direct negotiations.

The question of justness and fairness of a settlement should be examined with reference to the situation as it stood on the date on which it was arrived at. Where out of 1328 workmen who were in the Company's service on July 31, 1973, 995 workmen signed the settlement and also accepted their dues thereunder, and 242 workmen accepted their dues under the settlement by actually signing the receipts though they had not signed the settlement; and further where 910 workmen who left the company between January 1, 1968 and July 31, 1973 had also accepted their dues

under the settlement and where the settlement was made with the Union which represented a very large majority of the workmen of the Company, the Tribunal's finding that the settlement was just and fair has to be accepted. 1977 Lab.IC 162 (SC), (1963) 1 Lab.IC 318 (SC), AIR 1964 SC 689, AIR 1964 SC 160, Rel. on ILR (1975) Bom 1014 Reversed."

14. In view of observations made by the Apex Court in respect to whether writ petition in such circumstances should have to be entertained or not. The answer is when there is a disputed question of facts and having alternative forum to redress the grievance available to the petitioner, High Court should not have to entertain such petition while exercising the power under Article 226 of the Constitution of India.

15. Learned advocate Mr. Mehta challenged the settlement dated 31st May 2006 that it is illegal because merely at arrived at with old office bearer of the Union. Whether old officer bearers having been authorised by the workers working in the company or not. Whether settlement arrived at by the Management with the representatives of the workers as required under Section 2(P) of the Industrial Disputes Act, 1947 and at the time of recording the settlement by the conciliation officer is there any objection raised by the petitioner Union before the conciliation officer or not? These are the questions

involved the disputed questions of fact. The Apex Court has rightly observed in **Air India Limited and Others vs. Vishal Capoor & Ors. (supra)** that it is not necessary to issue notice to the respondents with come out the case of disputed question of fact but Court can *prima facie* examined the matter as it is and if from the scrutiny of the nature of the claim made in the petition, a Court feels that these are disputed question of facts then Court should not have to entertain the petition and Court should have to dismiss such petition where involves of the disputed question of facts between the parties. In respect to the unfair labour practice, this question is also required to be examined by the authority whether any unfair labour practice has been adopted by employer / Union by old office bearers or not. For grievance against unfair labour practice, petitioner having an alternative Forum to file application before the authority (appropriate Government) to take appropriate action being an offence committed by the employer/ Union for adopting unfair labour practice under the provisions of Industrial Disputes Act, 1947. In respect to the lock out whether it is legal or illegal, Union has already raised industrial disputes which is pending before the authority. An ordinary and natural time must have to be taken by the authority while taking appropriate decision on the subject of dispute. The Court should not have to interfere with the intermediate stage of the facts when there is no any conclusion on the part of the authority. Therefore all the questions which has been

raised before this Court which are really and exactly a rivalry of two faction of one Union which ultimately, adversely affect to the interest of the workman. In industrial law, important is workman not the Union. The settlement is for the workman not for the Union. When Union demanding the prime place above the workman then it itself amounts to ignoring the interest of the workers by the Union only on the ground to satisfy their ego before the Management. This is not a healthy litigation of the petitioner Union before this Court just to curb the activities of the old office bearers, this petition has been filed by the Union to obtain an order from this Court to satisfy their ego before employer. Such type of petition should not have to be entertained by this Court when workers have not come out with any complaint before this Court or before any authority that this settlement is unfair, unjust and arbitrary. When settlement arrived at before conciliation officer without any objections from the petitioner Union. Though subsequently objection raised but at the time when it was recorded, no objection was raised by the petitioner Union before conciliation officer and in such circumstances, such settlement is legal and valid or not can be challenged by raising industrial dispute and appropriate Forum under industrial law may take any decision in respect to the settlement. Therefore, the questions which are raised before this Court cannot be entertained by this Court. The impression of this Court is nothing else but a rivalry between two faction of one Union

which are never satisfied or look after the real interest of the workman. According to my opinion, the real challenge / grievance against old office bearer of the Union but not against the settlement arrived at by the old office bearers. The intention of petitioner that Management should have to settle the dispute with petitioner Union and not with old office bearer of the Union. This is real a main challenge of the petitioner – Union. The petitioner Union is not able to point out any item of settlement is unjust or unfair or contrary to the interest of workers. In entire petition, real challenge is that why employer / management has settled the dispute with old office bearer of the Union. The question of recognition is a prerogative of employer. Right to recognise is not a fundamental right or statutory right. Such right cannot be enforce against employer. Therefore, if management recognised old office bearer being a representative of the workers for discussion and settlement arrived at between them in the interest of workers then petitioner Union having no legal right to challenge such settlement only on the ground that why employer / management has arrived at settlement with old office bearer of the Union. However, if according to petitioner – Union, settlement is unjust, unfair, then have alternative remedy to raise dispute under the machinery of Industrial Disputes Act, 1947. Therefore, according to my opinion, there is no substance in the present petition and therefore, present petition is dismissed in limine. It is made clear that observations made by

this Court may not come in the way of petitioner if petitioner will avail alternative remedy under the provisions of Industrial Disputes Act, 1947. The observation of this Court is on *prima facie* examining the issue raised by the petitioner. Therefore, according to my opinion, after perusing the entire annexures attached to the petition and considering the submission made by learned advocate Mr. Mehta a pure disputed question of facts to be decided are involved in the petition and about the grievance / prayer made in petition, petitioner having effective, alternative and statutory remedy available under industrial Forum, therefore, considering the observations referred above, the present nature of petition cannot be entertained and it is also not maintainable in law.

16. Therefore, there is no substance in the present petition and present petition is dismissed in limine.

[H.K. RATHOD, J.]

#Dave